



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF KÖKLÜ v. TURKEY

(Application no. 10262/04)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Köklü v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
Antonella Mularoni,
Ireneu Cabral Barreto,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
Vladimiro Zagrebelsky,
András Sajó, *substitute judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 September 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10262/04) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Turgut Köklü (“the applicant”), on 17 February 2004.

2. The applicant was represented by Mrs S. Akat, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 6 September 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1977 and lives in Istanbul.

5. On 10 March 1998 the applicant was arrested on suspicion of membership of an illegal armed organisation, namely the TIKB (*the Revolutionary Communist Union of Turkey*).

6. On 13 March 1998 he was brought before the public prosecutor and then the investigating judge at the Istanbul State Security Court. The latter remanded him in custody on the same day.

7. On 17 March 1998 the public prosecutor filed a bill of indictment with the Istanbul State Security Court, charging the applicant with membership of an illegal organisation under Article 168 § 2 of the Criminal Code.

8. Between 25 March 1998 and 21 March 2001, the court held nineteen hearings. During these hearings the Istanbul Security Court, relying on the state of the evidence, the nature of the offence, and the duration of his detention, refused to release the applicant.

9. On 21 March 2001 the Istanbul State Security Court pronounced its judgment and convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment under Article 168 of the Criminal Code.

10. On 8 August 2001 the Court of Cassation quashed this judgment. The case was accordingly remitted to the Istanbul State Security Court.

11. On 17 September 2001 the Istanbul State Security Court resumed the trial. During the subsequent hearings, the court rejected the applicant's requests for release, having regard to the state of the evidence.

12. At the hearing on 1 June 2003, the applicant's lawyer once again requested the court to release the applicant. In her submissions, she also drew attention to the psychological state and treatment of the applicant. The court rejected this request. An appeal lodged in that connection was also dismissed by a further court on 28 August 2003.

13. By Law no. 5190, in June 2004 State Security Courts were abolished. Subsequently, the Istanbul Assize Court acquired jurisdiction over the case.

14. On 25 October 2004 the applicant's lawyer requested the court to release the applicant. On 1 November 2004 the applicant was released pending trial.

15. According to the information made available to the Court by the parties to date, the case is apparently still pending before the Istanbul Assize Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

16. The applicant complained that his detention on remand exceeded the reasonable time requirement. He also contended that he had no effective

remedy to challenge the lawfulness of his detention on remand. In respect of his complaints the applicant relied on Articles 5 § 3 and 13 of the Convention. However, the Court considers that the applicant's second complaint should be examined from the standpoint of Article 5 § 4, rather than Article 13.

17. Article 5 §§ 3 and 4 of the Convention provides as relevant:

Article 5 § 3

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

Article 5 § 4

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Article 5 § 3 of the Convention

1. Admissibility

18. The Government argued that, as the applicant had lodged his complaint under Article 5 § 3 of the Convention on 17 February 2004, the time he had spent in detention between 10 March 1998 and 21 March 2001 should be rejected for having been introduced outside the six-month time-limit laid down in Article 35 § 1.

19. The Court refers to the principles adopted in the *Solmaz v. Turkey* judgment (no. 27561/02, § 36, ECHR 2007-... (extracts)), where it held that, if the applicant is in effect imprisoned throughout, the multiple, consecutive detention periods should be regarded as a whole and the six-month period should only start running from the end of the last period. In the instant case, the applicant's detention on remand began when he was arrested on 10 March 1998. He was detained within the meaning of Article 5 § 3 of the Convention until his conviction by the Istanbul State Security Court on 21 March 2001. As from that date, until 8 August 2001, when the Court of Cassation quashed the decision of the first-instance court, he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1(a) and, therefore, this part of his detention falls outside the scope of Article 5 § 3. From 8 August 2001 until his release pending trial on 1 November 2004, the applicant was again in pre-trial detention falling

under Article 5 § 3 of the Convention. As a result, given the applicant's continued detention throughout these different phases, the six-month period should only start running from the end of the last period of pre-trial custody, which is 1 November 2004 (see *Akyol v. Turkey*, no. 23438/02, § 25, 20 September 2007).

20. The Court accordingly dismisses the Government's objection.

21. It further notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

22. The Court notes that, as explained above, the period in question began on 10 March 1998 with the applicant's arrest and ended on 1 November 2004, when the applicant was released pending trial. In line with its case-law, after deducting the time during which the applicant was detained as a convicted prisoner under Article 5 § 1 (a) of the Convention between 21 March 2001 and 8 August 2001, the period to be taken into consideration under Article 5 § 3 in the instant case is over six years and four months. The domestic courts had constantly extended the applicant's detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of evidence".

23. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present application (see, for example, *Atıcı v. Turkey*, no. 19735/02, 10 May 2007; *Solmaz*, cited above; *Dereci v. Turkey*, no. 77845/01, 24 May 2005; *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, it considers that in the instant case the length of the applicant's pre-trial detention was excessive and contravened Article 5 § 3 of the Convention.

25. There has accordingly been a violation of this provision.

B. Article 5 § 4 of the Convention

1. Admissibility

26. The Government asked the Court to dismiss the applicant's complaint under Article 5 § 4 of the Convention for failure to exhaust domestic remedies under Article 35 § 1. Referring to the Court's decision in the cases of *Köse v. Turkey* ((dec.), no. 50177/99, 2 May 2006) and *Baştımar and Turkey* ((dec.), no. 74337/01, 5 December 2006), the

Government maintained that the applicant had failed to object to his continued remand in custody pursuant to Articles 297-304 of the former Code of Criminal Procedure. However, the Court finds that these cases cited by the Government may be clearly distinguished on their facts from the present application.

27. The Court reiterates that it has already examined and rejected the Government's preliminary objections in cases similar to the present application (see *Koşti v. Turkey*, no. 74321/01, §§ 18-24, 3 May 2007). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, it rejects the Government's preliminary objection.

28. The Court considers this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

29. The Government contended that the domestic law provided an effective remedy to challenge the lawfulness of the applicant's detention on remand.

30. The applicant maintained that his objection to his detention had received no serious consideration by the domestic courts, which used stereotyped wording in dismissing his requests.

31. The Court notes that, in several cases raising similar issues to the present application, it has rejected the Government's foregoing contention. It concluded that Article 298 of the Code of Criminal Procedure could not be considered an effective remedy and found a violation of Article 5 § 4 of the Convention (see, *mutatis mutandis*, *Koşti and Others*, cited above, §§ 21-25; *Nart v. Turkey*, no. 20817/04, § 39, 6 May 2008; *Öcalan v. Turkey* [GC], no. 46221/99, §§ 71-72, ECHR 2005-IV). The Court finds no particular circumstances in the instant case which would require it to depart from these previous findings.

32. In conclusion, the Court holds that there has been a violation of Article 5 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

34. The Government contested that argument.

35. The period to be taken into consideration began on 10 March 1998 with the applicant's arrest and, according to the information in the case file provided by the parties, had not yet ended at the time of the adoption of the present judgment. It has thus lasted more than ten years and six months for two levels of jurisdiction.

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

38. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

39. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

41. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He further claimed 3,600 new Turkish liras (TRY) in respect of pecuniary damage. In this connection, the applicant submitted that he was suffering from psychological problems and had had to be hospitalised for treatment.

42. The Government contested the claims.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained some non-pecuniary damage on account of the undue length of his detention on remand and of the criminal proceedings, which cannot be sufficiently compensated by the finding of violations alone. Ruling on an equitable basis, it awards him EUR 8,000 under that head.

B. Costs and expenses

44. The applicant also claimed a total of TRY 3,227.70 for the costs and expenses incurred before the Court. In this respect, he submitted copies of postal expenses amounting to TRY 11.60, equivalent to approximately EUR 6.

45. The Government contested the claim.

46. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not substantiated that he has actually incurred the costs claimed. Accordingly, it makes no award under this head.

C. Default interest

47. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 §§ 3 and 4 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be converted into new Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President